

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DANIEL ORLANDO ZORILLA,

Petitioner

v.

IMMIGRATION AND
NATURALIZATION SERVICE, et al.,

Respondents

CIVIL ACTION NO. 1:CV-01-0951

(Judge Rambo)

(Magistrate Judge Blewitt)

**FILED
SCRANTON**

JUN 22 2001

PER

DEPUTY CLERK

REPORT AND RECOMMENDATION

Petitioner, at the relevant time an inmate at the York County Prison, filed the instant Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 in the Southern District of New York on May 18, 2001. (Doc. 1). Therein, Petitioner, a native and citizen of Argentina, challenges his final order of removal dated March 19, 2001, alleging that "[t]he retroactive application of the provisions of the IIRIRA by the BIA is unconstitutional because it violates Mr. Zorilla's substantive and procedural rights under the due process clause of the fifth Amendment of the Constitution." (Doc. 1, p. 2).

On May 18, 2001, an Order was entered in the Southern District of New York transferring the matter to this judicial district and staying the removal of the Petitioner until further order of the court. Upon receipt of the matter, it was noted that there was no record of the Petitioner having either paid the \$5.00 filing fee or moved to proceed *in forma pauperis*. Therefore, an order was issued directing the Petitioner to either pay the filing fee or submit the appropriate motion. (Doc. 1). The envelope which contained the order was marked "return to sender, no forwarding

address." (Doc. 3). The Court contacted the York County Prison to determine the whereabouts of the Petitioner. The Court was notified by the INS representative at the York County Prison that the Petitioner was deported to Argentina on May 10, 2001. As the Petitioner has been deported, the petition is rendered moot.

Based on the foregoing, it is respectfully recommended that the Petition for Writ of Habeas Corpus be dismissed as moot.


THOMAS M. BLEWITT
United States Magistrate Judge

Dated: June 21, 2001

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NOTICE

PER

DEPUTY CLERK

NOTICE IS HEREBY GIVEN that the undersigned has entered the foregoing

Report and Recommendation dated **June 22, 2001**.

Any party may obtain a review of the Report and Recommendation pursuant to

Rule 72.3, which provides:

Any party may object to a magistrate judge's proposed findings, recommendations or report addressing a motion or matter described in 28 U.S.C. § 636 (b)(1)(B) or making a recommendation for the disposition of a prisoner case or a habeas corpus petition within ten (10) days after being served with a copy thereof. Such party shall file with the clerk of court, and serve on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. The briefing requirements set forth in Local Rule 72.2 shall apply. A judge shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge, however, need conduct a new hearing only in his or her discretion or where required by law, and may consider the record developed before the

magistrate judge, making his or her own determination on the basis of that record. The judge may also receive further evidence, recall witnesses or recommit the matter to the magistrate judge with instructions.

A handwritten signature in black ink, appearing to read 'Thomas M. Blewitt', written over a horizontal line.

THOMAS M. BLEWITT
United States Magistrate Judge

Dated: June 22, 2001